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NEXTDOOR.COM

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NEXTDOOR.COM, INC., a Delaware
corporation,

Plaintiff,

v.

RAJ ABHYANKER, an individual,

Defendant.

Case No.: 3:12-cv-05667-EMC-NMC

**PLAINTIFF NEXTDOOR.COM'S
RESPONSE TO DEFENDANT RAJ
ABHYANKER'S OBJECTIONS TO
FORM OF SUMMARY JUDGMENT
INJUNCTIVE ORDER (DKT. 369)**

1 Plaintiff Nextdoor.com, Inc. hereby responds to Defendant Raj Abhyanker's Objections to
 2 Form of Summary Judgment Injunctive Order ("Objections") filed October 21, 2014, as
 3 Docket 369.

4 Nextdoor.com requests that the Court enter its order defining injunctive relief as soon as
 5 practicable, so that the parties may know whether the case will need to proceed to trial on the
 6 cybersquatting claim, or whether the injunctive relief on Count IV supplants the need for such a
 7 trial. *See* Dkt. 367. With pre-trial submissions due November 4, 2014, time is of the essence.
 8 Because the parties have been unable to reach agreement on language, Nextdoor.com responds
 9 briefly to Abhyanker's Objections as follows:

10 Abhyanker's objection that the Order should not include the standard language binding his
 11 "agents, servants, assigns, employees, and those in active concert or participation with any of
 12 them" is contrary to the language of Fed. R. Civ. P. 65(d)(2), which provides that exactly such
 13 persons will be bound. The only proposed term not appearing in Rule 65(d)(2) is "assigns,"
 14 which the Court has discretion to include and has included in other trademark injunctions. *See*,
 15 *e.g.*, *Feiya Cosmetics, LLC v. Beyond Beauty Int'l, LLC*, C 10-0967 PJH, 2011 WL 4506165, at
 16 *1 (N.D. Cal. Sept. 29, 2011) (permanent injunction included Rule 65(d)(2) persons plus "privies,
 17 successors, and assigns"); *Jet Works Air Ctr. Mgmt. L.L.C. v. Jetworks Int'l, Inc.*, C-09-1395
 18 MMC, 2009 WL 2849608, at *1 (N.D. Cal. Sept. 2, 2009) (trademark injunction order including
 19 Rule 65(d)(2) persons plus "representatives, successors and assigns").

20 Abhyanker's second objection—that the language proscribing uses that are "confusingly
 21 similar" or "colorable imitations" is too vague—ignores his prior stipulation to exactly that
 22 language in the prior injunction the Court already issued. *See* Dkt. 193. This type of language is
 23 regularly used to prevent evasion of trademark injunctions by using variations or derivatives of
 24 the mark. *See, e.g.*, *Feiya Cosmetics, LLC*, 2011 WL 4506165, at *1 (enjoining "colorable
 25 imitations"); *Jet Works Air Ctr. Mgmt. L.L.C.*, 2009 WL 2849608, at *1 (enjoining "colorable
 26 imitations" or any conduct "likely to confuse"); *Adobe Sys. Inc. v. Colorado Internet Servs., LLC*,
 27 3:13-cv-04193-EMC (N.D. Cal. February 27, 2014) (stipulated injunction prohibiting use
 28 "confusingly or substantially similar to, or that constitutes a colorable imitation" of trademarks);

1 *BMW of North America, LLC v. Dinodirect Corp.*, 3:11-cv-04598-WHA (N.D. Cal. July 2, 2013)
 2 (stipulated injunction barring “confusingly similar” or “colorable imitations”).

3 Third, Nextdoor.com does not agree with Abhyanker that there is any issue respecting the
 4 term FATDOOR raised by the proposed order. Abhyanker seems to be angling to leave open the
 5 opportunity for his entity Fatdoor, Inc. to continue to misuse www.nextdoor.cm, or the
 6 NEXTDOOR mark. If the Court concluded any issue required revision, it could include an
 7 express disclaimer that this order did not affect use of the term FATDOOR, so long as the order
 8 cannot be misinterpreted to allow use of www.nextdoor.cm or the NEXTDOOR mark to promote
 9 Abhyanker’s competing Fatdoor, Inc. business. A sentence could be added at the end of
 10 paragraph 3 of the Proposed Order (Dkt. 367), to read: “Nothing in the foregoing affects
 11 Abhyanker’s use of the term ‘FATDOOR’ in the field of online social networking if separate and
 12 unconnected to any use of the term NEXTDOOR, nor alters any ruling in the Court’s orders at
 13 Dockets 226 or 303 in this action.”

14 Finally, there is no necessity at this time for the Court to make a determination of
 15 prevailing parties or attorneys’ fees. That issue can be determined on the record at the end of the
 16 proceeding, provided in the Court’s prior injunction Order. *See* Dkt. 193. For present purposes,
 17 all that appears necessary to avoid trial, and further preparation for trial, is entry of an injunction
 18 on the Fourth Cause of Action that will allow a voluntary dismissal of the Third by ensuring no
 19 continuing misuse of the www.nextdoor.cm domain.

20 Respectfully,

21 Dated: October 27, 2014

FENWICK & WEST LLP

23 By: /s/ Laurence F. Pulgram

24 Laurence F. Pulgram

25 Attorneys for Plaintiff
 26 NEXTDOOR.COM, INC.